

RECEIVED

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

2 Name WANG CHARLES S. RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(Last) (First) (Initial)

3 Prisoner Number DUH740 / 08033629

4 Institutional Address 701 S. Abel Street, Milpitas, CA 95035

5 **FILED**

6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**

JUN 19 2008

8 CHARLES WANG
(Enter the full name of plaintiff in this action.)

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

9 vs.

10 Tanya Smith; Judge Kenneth
11 Shapiro; Admir Alum (A.S. DA)
12 Officer Zen
(Enter the full name of respondent(s) or jailor in this action)

13 Case No. CV 08-2692 PJH
(To be provided by the clerk of court)

14 **PETITION FOR A WRIT
OF HABEAS CORPUS**

15 **E-filing**

16 **Read Comments Carefully Before Filling In**

17 **When and Where to File**

18 You should file in the Northern District if you were convicted and sentenced in one of these
19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,
20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in
21 this district if you are challenging the manner in which your sentence is being executed, such as loss of
22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

23 If you are challenging your conviction or sentence and you were not convicted and sentenced in
24 one of the above-named fifteen counties, your petition will likely be transferred to the United States
25 District Court for the district in which the state court that convicted and sentenced you is located. If
26 you are challenging the execution of your sentence and you are not in prison in one of these counties,
27 your petition will likely be transferred to the district court for the district that includes the institution
28 where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainers), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland):

14 SANTA CLARA COUNTY, SUPER. CRT. SAN MARTIN, CA
 15 Court SOUNTY COUNTY Location

16 (b) Case number, if known FF 405914

17 (c) Date and terms of sentence Original 80 days + Probation

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes No

20 Where?

21 Name of Institution: ELMWOOD

22 Address: 701 S. Abel Street, Milpitas, CA 95035

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Section 2735, 2736 Penal Code

27

28

1 petition? Yes _____ No ✓

2 (c) Was there an opinion? Yes No _____

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes _____ No _____

5 If you did, give the name of the court and the result:

6 _____
7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes _____ No _____

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: _____

19 Type of Proceeding: _____

20 Grounds raised (Be brief but specific):

21 a. _____

22 b. _____

23 c. _____

24 d. _____

25 Result: _____ Date of Result: _____

26 II. Name of Court: _____

27 Type of Proceeding: _____

28 Grounds raised (Be brief but specific):

1 a. _____
2 b. _____
3 c. _____
4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____
10 b. _____
11 c. _____
12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____
18 b. _____
19 c. _____
20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No _____

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 Note: You must present ALL your claims in your first federal habeas petition. Subsequent
 3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
 4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Constitutional Rights of Due Process; and CA CDP 380.10[1];
 6 380.06 rights to compulsory process, 380.10 rights to present a defense.

7 Supporting Facts: In fall of 2004, I asked Public Defender, Tanya Smith to
 8 investigate several key areas, such as phone records of evening of Marvin's 1/2004.
 9 She denied that. That impeded my ability to present a defense
 10 at "pre-trial" and "trial".

11 Claim Two: Constitutional Rights of Due Process; and CA CDP 380.10[1]
 12 380.05,09 rights to an impartial jury, 380.09 impartial judge.

13 Supporting Facts: In Spring of 2005, I asked Judge Shapiro for a venue
 14 change (see court transcript). Judge Shapiro presided on the
 15 "pre-trial". In Summer of 2006, he was assigned to be the trial
 16 judge. Since he formed his opinion in "pre-trial", he is not impartial at trial.

17 Claim Three: Constitutional Rights of Due Process; and CA CDP 380.10[1]
 18 380.03 right to present at proceeding, 380.07 rights to confrontation as compounding

19 Supporting Facts: During the Sixth District Appeal process. The Appeal was
 20 filed before I even had a chance to review it. Dist. Attorney Amir Ahm
 21 did not provide critical information to the attorney. Only a portion of Judge
 22 Shapiro's decision was reversed. I was basically denied the appeal for
 23 the cri

24 If any of these grounds was not previously presented to any other court, state briefly which 14,5,6
 25 grounds were not presented and why: Cont'd 

26 I did not know of any then, and the attorney did not
 27 advise me of these rights.

28

B. Grounds for Relief (continued)

Claim Four: Constitutional Rights of Due Process; and CA CDP 380.09[1] 380.09 rights to prosecutorial fairness.

Supporting Facts: In September of 2006, I was told to plead "No Contest" to § 273.6 PC. Judge Shapiro, later said, pleading "No Contest" is the same as pleading "guilty". I was not informed as such.

Claim Five: Constitutional Rights of Due Process and Equal Protection, CA CDP 380.10[1], 380.09 rights to prosecutorial fairness.

Supporting Facts: Initially, Morgan Hill police, officer Zen did not conduct a fair investigation. By the time of "pre-trial" and "trial", both Officer Zen and Asst. DA Amir Alum already knew the allegations could be false. They acted in a biased, unfair manner.

Claim Six: Constitutional Rights of Due Process; and CA CDP 380.10[1] 380.09 rights to prosecutorial fairness.

Supporting Facts: In summer of 2007, after only a partial reversal of Judge Shapiro's decision, I filed a Notice of Appeal to California State Supreme court in SF. I was in county jail for an alleged "Probation Violation" since February 15th that year. I was denied access to postage stamps to communicate to the court. I was infacted five (5) times for doing nothing different from others. On February 28th, I was put in solitary confinement, in a room with heat blocked off, and I was not issued a mattress, which is also against Rule book, I later found. I was told not to appeal! My legal mail was opened. Mail was missing. When I went out in November, I went to state office in San Francisco. I was told they never received the Notice I filed. I was denied from appeal again.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 _____
5 _____
6 _____

7 Do you have an attorney for this petition? Yes _____ No

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on June 13, 2008

14 Date

15 _____
16 Signature of Petitioner

17
18
19
20 (Rev. 6/02)

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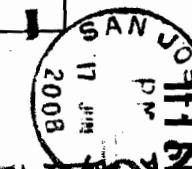
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Charles L. Mays



17 JUN
2008



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2008



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